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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TRINH, TAN H

ART UNIT PAPER NUMBER

2684

DATE MAILED: 08/10/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/677,131

Applicant(s)

PALENIUS, TORGNY

Examiner

TAN TRINH

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8,9 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-7 and 10-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. Claims 2-7 and 10-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for allowance

2. The following is a statement of reasons for the indication of allowable subject matter:

Regarding to claims 2 and 10, are allowed with the same reasons set forth in the previous Office action (paper # 8).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilhousen (U.S. Patent No. 5,603,096).

Regarding to claims 1 and 9, Gilhousen teaches a method of controlling transmit power of the first channel base on the determined data rate, (see fig. 3, and col. 11 lines 66-67, col. 12 lines 1-23).

Regarding to claim 8, Gilhousen teaches the adjusting the transmit power base on the received power control command (see fig. 3, and col. 13, lines 3-18).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moon (U.S. Patent No. 6,671,266) in view of Gilhousen (U.S. Patent No. 5,603,096).

Regarding claim 17, Moon teaches a method for controlling the transmit power (see fig. 4), and the steps of: adjusting a ratio of the power between at least a first channel and second channel base on a data rate (see fig. 4, and abstract, lines 1-11, and col. 2, lines 60-67, col. 10, lines 51-56), Moon also teaches a channel encoder for encoding the input data of the and the power ratio change command generator reset the power ratio according to the output of the decider and send the change power ratio to the base station (see col. 13, lines 46-49 and col. 14, lines 50-51). But Moon fails to teach the data rate base on the data rate of the at least first channel.

However, Gilhousen teaches the data rate base on the data rate of the at least first channel and Gilhousen teaches the power control channel on the first data rate of the transmission rate for CDMA (see col. 11, lines 38-43 and col. 12, lines 18-23).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify the invention of Moon, and have a data rate base on the data rate

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of the at least first channel as taught by Gilhousen, thereto in order to provide the power control of the first channel and second channel of the data rate easier (see Gilhousen, col. 8, lines 44-67).

Response to Arguments

8. Applicant's arguments filed 7-7-2003 have been fully considered but they are not persuasive.

Response to Arguments:

Applicant's argument the reference of Gilhousen is not teaches the data rate of at least a first channel. Examiner does not agree. Since Gilhousen teaches all power control command and adjustment are with respect to the nominal power used at each transmit data rate of the power control channel in cdma (see col. 8, lines 65-67), and the data rate transmission signal over a channel of the mobile communication device that is at least a first channel (see col. 12, line 1-23).

Therefore the rejection of claims 1 and 9 are read on the data rate of at least a first channel of Gilhousen.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

10. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for Technology Center 2600 only)

*Hand-delivered responses should be brought to Crystal Park II,
2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Trinh whose telephone number is (703) 305-5622. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung, can be reached at (703) 308-7745.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is **(703) 306-0377**.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tan H. Trinh
Art Unit 2684
July 13, 2004



NICK CORSARO
PATENT EXAMINER